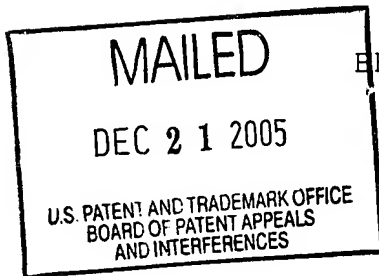


The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRETT A. SNEED

Appeal No. 2006-0217
Application No. 10/068,914

ON BRIEF

Before KIMLIN, PAK and KRATZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-20.

Claims 1 and 7 are illustrative:

1. A protective flooring unit comprising:

a main body having opposed first and second edges and
opposed third and fourth edges, said main body
comprising an overlapping portion extending adjacent
and parallel said second edge, wherein a maximum

thickness of said overlapping portion and of said third and fourth edges approximately equals a maximum thickness of said main body; and

a single flap, wherein said flap is of uniform thickness and extends outwardly from said first edge of said main body, and wherein a thickness of said flap is less than a maximum thickness of said main body.

7. A protective flooring unit comprising:

a main body having an upper surface and opposed first and second edges and opposed third and fourth edges, said main body comprising an overlapping portion extending adjacent and parallel said second edge, wherein a maximum thickness of said overlapping portion and of said third and fourth edges approximately equals a maximum thickness of said main body, said main body having a uniform pattern of raised pads extending upwardly along said upper surface; and

a single flap, wherein said flap is of uniform thickness and extends outwardly from said first edge of said main body, and wherein said flap has a relatively flat upper surface.

The examiner relies upon the following references in the rejection of the appealed claims:

Corson	2,512,310	June 20, 1950
Harmon et al. (Harmon)	3,746,607	Jul. 17, 1973
Spamer et al. (Spamer)	4,565,725	Jan. 21, 1986
Gray et al. (Gray)	4,565,728	Jan. 21, 1986
Robbins, III	4,816,316	Mar. 28, 1989

Appellant's claimed invention is directed to a protective flooring unit, such as a floor mat, comprising opposed first and second edges, with the second edge comprising an overlapping

portion and the first edge having a single flap extending outwardly therefrom. The overlapping portion, the third edge and the fourth edge have a maximum thickness that is approximately equal to the maximum thickness of the main body of the unit. Independent claims 1 and 14 define the single flap as having a thickness that is less than the maximum thickness of the main body. Independent claim 7 has no such limitation on the single flap. According to appellant, "[t]he flap enables separate flooring units to be joined by placing an overlapping portion of a second flooring unit over the flap of a first unit to provide a nearly seamless transition between the two adjoined mats" (page 2 of principal brief, last paragraph).

Appellant has not grouped the appealed claims nor advanced separate arguments for any particular claim on appeal. Accordingly, claims 1-6 and 14-20, which define a thickness for the single flap, stand or fall together, whereas claims 7-13, which do not define a thickness for the single flap, stand or fall together.

Appealed claims 1-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by either one of Corson, Robbins, Harmon, Spamer or Bustos.

We have thoroughly reviewed the respective positions advanced by appellant and the examiner. In so doing, we find that the examiner has not established that the applied references describe the subject matter of claims 1-6 and 14-20 within the meaning of § 102. However, we will sustain the examiner's § 102 rejection of claims 7-13.

We consider first the examiner's rejection of claims 1-6 and 14-20, which require that the single flap extending from the first edge of the main body has a thickness that is less than the maximum thickness of the body. In response to appellant's argument that none of the references teaches only a single flap of the recited thickness, the examiner takes the position that the "comprising" language of the claims opens the claims to embodiments wherein "there could be flaps extending from any of the other edges" (page 4 of Answer, last paragraph). According to the examiner, "[t]he instant language would only exclude more than one flap from the first edge" (id.).

In our view, the examiner's interpretation of the claims is not a reasonable one when the claims are read as a whole, as they must be. We agree with appellant that independent claims 1 and 14 define a protective flooring unit comprising a main body and a

single flap, such that if other edges of the body contained flaps it could not be reasonably said that the flooring unit comprises a main body and a single flap. Manifestly, the unit would have a plurality of flaps. The "comprising" language of the claims does not open the claims to interpretations that are inconsistent with the totality of the claims.

We will sustain the examiner's § 102 rejections of claims 7-13 inasmuch as claim 7 does not define the single flap as having a thickness that is less than the maximum thickness of the main body. Claim 7 only recites that the single flap is of uniform thickness. Consequently, since the uniform thickness of the single flap can be of the same magnitude as the overlapping portion and the third and fourth edges of the main body, we perceive no structural distinction between the claimed single flap, overlapping portion, and third and fourth edges, nor any structural distinction between edges within the scope of claim 7 and the edges described in the prior art references. Stated otherwise, since there is no structural distinction between the claimed single flap and the second edge, claim 7 does not define a patentable distinction over the opposed edges of the applied references.

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One final point remains. This application is remanded to the examiner for consideration of the obviousness of the claimed subject matter within the meaning of 35 U.S.C. § 103. The examiner should consider the obviousness of making one edge of adjoining mats, or any adjoining sheets, films, etc., of decreased thickness in order to accommodate a relatively seamless attachment of the adjoining surfaces.

This remand to the examiner pursuant to 37 CFR § 41.50(a)(1) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)) is not made for further consideration of a rejection. Accordingly, 37 CFR § 41.50(a)(2) does not apply.

Accordingly, based on the foregoing, the examiner's rejection of claims 1-6 and 14-20 is reversed, whereas the examiner's rejection of claims 7-13 is affirmed. The examiner's decision rejecting the appealed claims is affirmed-in-part, and this application is remanded to the examiner for the reasons set forth above.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED-IN-PART AND REMANDED

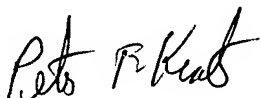


EDWARD C. KIMLIN)
Administrative Patent Judge)



CHUNG K. PAK)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES



PETER F. KRATZ)
Administrative Patent Judge)

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Application No. 10/068,914

Stinson, Morrison & Hecker LLP
Attn: Patent Group
1201 Walnut Street, Suite 2800
Kansas City, MO 64106-2150